

the Magistrate Judge recommended granting the Amended Motion for Summary Judgment as to plaintiff's claims of equal protection violations and prospective injunctive relief and denying the motion as to plaintiff's claim of retaliation. *Id.*

The only remaining defendant in this case is defendant Torres. At present, plaintiff's claim of excessive use of force will proceed to trial. In light of the COVID-19 pandemic, there is no assurance plaintiff's claims against defendant Torres can be handled with dispatch. In order to avoid the possible injustice of delaying judgment against defendants Livingston, Thorp and Holderrieth, the court believes that severance of the claims against defendant Torres and the entry of Final Judgment in the above-referenced case against defendants Livingston, Thorp and Holderrieth pursuant to Federal Rule of Civil Procedure 54(b) is appropriate. *See Gelboim v. Bank of America Corp., et al.*, 574 U.S. 405, 409 (2015); *Meadaa v. K.A.P. Enterprises, L.L.C.*, 756 F.3d 875, 87-80 (5th Cir. 2014). While reversal of plaintiff's claims against defendants Livingston, Thorp and Holderrieth is unlikely,¹ any further delay could prove prejudicial as potential witnesses disappear and memories fade. As it has taken considerable time to serve defendant Torres and the challenges imposed by the COVID-19 pandemic further complicate the trial setting as to plaintiff's claims against him, the court expressly finds there is no just reason for delay. It is, therefore,

ORDERED that plaintiff's claims against defendant Juan A. Torres are **SEVERED** from this action and shall proceed as a separate civil rights action filed pursuant to 42 U.S.C. § 1983. The Clerk of Court is instructed to file the following docket entries into the new civil rights action: 1-2, 12, 13, 37-38, 58-59, 64-65, 73, 76, 80, 82, 88, 91, 100-101, 103-107, 110-116. The Clerk of Court is instructed further to docket plaintiff's demand for a jury trial into the new case. A Final Judgment

¹Plaintiff's claims against these defendants were dismissed pursuant to 28 U.S.C. § 1915(g) as plaintiff moved units and no longer met the imminent danger exception.

will be entered separately pursuant to Federal Rule of Civil Procedure 54(b) as to plaintiff's claims against defendants Livingston, Thorp and Holderrieth.

So ORDERED and SIGNED, Mar 03, 2021.



Ron Clark
Senior Judge